

# DERM Wetlands Advisory Task Force

## MINUTES

SEPTEMBER 29, 2011 1:30PM

701 NW 1 COURT  
2<sup>ND</sup> FLOOR TRAINING ROOM

<b>MEETING CALLED TO ORDER</b>	1:42pm	
<b>MEMBERS PRESENT</b>	Patricia Baloyra Manuel Echezarreta Jose K Fuentes Jose M. Gonzalez James F. Murley Alice Pena Stephen A Sauls	<b>Non Voting:</b> Jennifer Smith, FDEP SE District Ray Scott, FDAC – Office of Agricultural Water Policy Ron Peekstok, SFWMD

## Agenda topics

### WELCOME AND INTRODUCTIONS

LEE N HEFTY, INTERIM DIRECTOR OF DERM

<b>DISCUSSION</b>	<p>Mr. Hefty welcomed all in attendance and requested that the Task Force introduce themselves. Mr. Hefty then introduced the non voting members of the Task Force, Jennifer Smith of the Florida Department of Environmental Protection Southeast District and Ray Scott of the Florida Department of Agriculture and Consumer Services. Mr. Hefty introduced Mr. Ron Peekstok, as an invited non voting member from the South Florida Management District and explained that the District was also invited to participate at the discretion of the Task Force, because under an agreement with FDEP, the SFWMD handles most freshwater permitting in Miami Dade County. Mr. Hefty then introduced County staff.</p> <p>Mr. Hefty addressed some housekeeping items with the Task Force. He further advised the Task Force that the meetings are public and are being video/audio recorded and that staff has developed a website specifically for the Task Force that will contain information regarding the meetings at <a href="http://www.miamidade.gov/derm">www.miamidade.gov/derm</a></p> <p>The Task Force was provided with a packet that contains background information assembled by County staff.</p>
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### REVIEW PURPOSE AND SCOPE OF DWATF

LEE N HEFTY, INTERIM DIRECTOR OF DERM

<b>DISCUSSION</b>	<p>Mr. Hefty gave a presentation to review the purpose and scope of the DERM Wetlands Advisory Task Force which was established by resolution by the Board of County Commission on July 17, 2011 for a term of six (6) months with a completion date of January 17, 2012. There are seven (7) voting members with quorum being based on the voting members only. The non voting members are here to participate and help answer questions and provide information on their respective agencies.</p> <p>The Task Force has four specific purposes:</p> <ol style="list-style-type: none"><li>1. Review the process that is used in classifying and determining wetland designations.</li><li>2. Determine whether the appeals process is fair, adequate and allows for due process.</li><li>3. Investigate ways of providing enhanced outreach to property owners located in environmentally sensitive areas regarding environmental permitting requirements that may be applicable to their properties.</li><li>4. Provide advice and recommendations to the Board of County Commission regarding revisions to wetlands regulations in Chapter 24 of the Miami Dade County Code and any DERM fees related thereto.</li></ol> <p>Mr. Hefty advised the Task Force of their responsibilities to determine how they govern themselves. He also advised the Task Force that the Mayor has appointed DERM to provide support for things such as meeting facilities, supplies and staff to assist in their process. DERM is also participating as an agency with regulatory responsibility for wetlands permits and staff will be available to make presentations and answer questions as needed by the Task Force.</p> <p>Mr. Hefty advised the Task Force that the next order of business would be to select a chair and vice chair and decide on how the Task Force would govern themselves. He also advised them that staff had prepared a draft agenda and that there was a presentation by a representative from the Commission on Ethics and Public Trust.</p> <p>Open to Task Force members for discussion.</p>
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**DWATF PROCEDURAL ITEMS: SELECT CHAIR/VICE CHAIR & SET RULES OF ORDER**

MEMBERS

<b>DISCUSSION</b>	Each Task Force member provided additional background information of themselves prior to making nominations for Chair and Vice Chair. A motion nominating Mr. James Murley for Chair was made by Mr. Jose K. Fuentes and seconded by Mr. Jose M. Gonzalez. No other nominations were made, and the motion passed.
	Mr. Murley, Chairman of the Task Force proposed a motion that the task force operate with the Robert's Rules of Order. Motion was seconded by Mr. Fuentes. With no opposition, the motion passed.
	Mr. Fuentes offered a motion nominating Mr. Manuel Echezarreta for Vice Chair. Motion was seconded by Mr. Gonzalez. No other nomination was made, Chair called the motion for Mr. Echezarreta and, noting no opposition, motion passed.
<b>CONCLUSIONS</b>	
Chairman of the Task Force: Mr. James Murley	
Vice Chair of the Task Force: Mr. Manuel Echezarreta	

**REVIEW DRAFT AGENDA**

MATTHEW DAVIS, CHIEF NRRRD - DERM

<b>DISCUSSION</b>	Chair made reference to draft agenda and recognized Mr. Matthew Davis to review draft agenda. Draft agenda accepted by members and moved forward as outlined.
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**PRESENTATION: MIAMI DADE COUNTY COMMISSION ON ETHICS TRAINING**

ROBERT THOMPSON, MDC COMMISSION ON ETHICS

DISCUSSION	Mr. Robert Thompson from the Miami Dade County Commission on Ethics presented to the Task Force on Governing Above Board. Mr. Thompson advised the Task Force on, among other things, the sunshine law and public records. Mr. Thompson also advised the members on the guidelines for holding public meetings.		
	Financial disclosures were discussed, confirmation of the need for this Task Force to file the forms will be provided to the members at the next meeting.		
	The Task Force was advised to contact the Commission on Ethics and Public Trust with any questions they may have.		
	Following the presentation the Task Force members held discussion on the matter.		
ACTION ITEMS		PERSON RESPONSIBLE	DEADLINE
Financial Disclosure forms necessary for members?		Robert Thompson Evan Skornick	Next Task Force Meeting
Provide brochures of the Conflict of Interest and the Code of Ethics to rest of Task Force members		Robert Thompson	Next Task Force Meeting

**PRESENTATION: INTRODUCTION TO WETLANDS PERMITTING IN MIAMI DADE COUNTY**

MATTHEW DAVIS, CHIEF NATURAL RESOURCES REGULATION AND RESTORATION DIVISION

<b>DISCUSSION</b>	Mr. Davis presented to the Task Force an introduction to wetlands permitting in Miami Dade County and addressed the items in the resolution as a starting point for the Task Force to see how they want to move forward with information they may want to see.
	Mr. Davis provided information on Federal, State and Local involvement in protection of wetlands, State rules related to wetlands delineation and mitigation, the County's authority in regulation of wetlands, the County's appeals process and the Department's efforts at outreach.
	Mr. Davis' presentation briefly discussed the similarities and differences between Federal, State and County reviews of wetlands permits. Mr. Davis discussed the State rules on wetland delineation and mitigation which both the State and the County must follow, and referred to local rules that provide for the County's regulatory authority. Mr. Davis explained that the regulated community has due process rights through the Environmental Quality Control Board and the court system, and discussed various outreach efforts taken by the Department related to wetlands and permitting requirements.
	Following the presentation the Task Force members held discussion on the matter.
	Ms. Alice Pena requested clarification on the task force's review of fees and staff explained that the task force was charged with considering fees associated with wetlands regulations.
	Mr. Stephen A. Sauls inquired about the unit's mission and what they are trying to accomplish as it pertains to wetlands.

	<p>Mr. Hefty responded that the Department implements Chapter 24 the Environmental Protection Ordinance which has regulations that protect wetlands and require permitting in wetlands. Those are policies that are approved by the Board of County Commissioners. They have been in place since the mid 1980's. It is the Department's responsibility to implement those and oversee issuance of permits as it relates to wetlands.</p> <p>Mr. Jose K. Fuentes open discussion on Resolution 561-11 which created the Task Force and the four areas that are outlined and how they were going to be addressed at future meetings. These are the responsibilities of the Task Force as outlined by the Board of County Commissioners.</p> <p>The Chair responded that those will be addressed in future meetings but that questions regarding those to staff were appropriate at this time.</p> <p>The Task Force members held discussion on the matter.</p> <p>Ms. Pena requested that the State provide the scientific proof or statement that demonstrates properties as wetlands, since it has been said that the Department follows state guidelines, even though it does not appear to be compatible.</p> <p>The Chair pointed out that there is a representative from the state agency in attendance and also clarified that this was beginning conversations and that it was not to raise or conclude discussion, but to help focus on how the Task Force is going forward.</p> <p>There was further discussion between staff and Task Force on the matter.</p> <p>Ms. Jennifer Smith from the Florida Department of Environmental Protection discussed the specific procedures, tests and information in the State rule that they must follow. Ms. Smith indicated her understanding that the Department(DERM) applies the same process and rule.</p> <p>Task Force members held discussion on the matter.</p> <p>Suggestion was made by Patricia Baloyra that at some point a study be conducted on the new canal and pump station that was put in the 8.5SMA to determine what affect the operation of the canal will have on those properties and whether hydrology changes would trump vegetation and soils as determining factors. Ron Peekstok from the South Florida Water Management District replied that the State method requires two of the three items to make a determination and that none would "trump" another.</p> <p>Task Force members held discussion on the matter.</p>
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ACTION ITEMS	PERSON RESPONSIBLE	DEADLINE
Stephen Sauls requested a map of the 8.5SMA	Staff	
Alice Pena requested a copy of Chapter 33B	Staff	

DISCUSSION OF FUTURE MEETING DATES AND AGENDA		MEMBERS
DISCUSSION	<p>Chair discussed clarification as to the official start of the Advisory Task Force which was determined to be July 17, 2011.</p> <p>Mr. Fuentes suggested that a recommendation be forwarded to the Board of County Commissioners to amend the resolution to add two more months to the Advisory Task Force.</p> <p>Chair recognized a motion to add 2 more months of existence according to Resolution 561-11 by Mr. Jose Fuentes. Motion was seconded by Mr. Jose Gonzalez.</p> <p>Task Force discussion on the matter.</p> <p>Motion carries by unanimous vote with direction to staff to prepare a draft memorandum from the Chair of the DWATF to the Chair of the Board of County Commissioners requesting sponsorship for a resolution to to amend Resolution 561-11 for an extension of time.</p> <p>Chair discussed with members his intent to communicate with staff on the output of the task force report so that he can present to the members for discussion, input and approval.</p> <p>Mr. Gonzalez commented that the report should include recommendations for specific code amendments with staff's assistance to draft said amendments.</p> <p>Task force discussion on the matter.</p> <p>Chair proposed item of business for the next meeting of the task force which was to hear from the different agencies their roles and responsibilities and how they determine wetlands and other related issues.</p>	

	<p>Patricia Baloyra clarified the request for presentations from the US Army Corp of Engineers, Florida Department of Environmental Protection, South Florida Water Management District and Florida Department of Agriculture and Consumer Services to discuss their roles with respect to wetlands permitting.</p> <p>Mr. Hefty pointed out that there were representatives from the state to verify that they would be able to make presentations on wetland delineation.</p> <p>The Chair recognized Mr. Ray Scott from the Florida Department of Agriculture and Consumer Services.</p> <p>(Mr. Scott's commentary is reported verbatim herein as per instruction of the DWATF Chair)</p> <p>Mr. Scott stated that they have had for sometime memorandums of agreement with the South Florida Water Management District in regard to the agricultural exemption that exists in state statute. This past session, that statute was revised and we have now the authority to make, before our determinations were advisory, but now they are binding. As I understand, and this may be part of the discussion for the Advisory Task Force, is that process and that exemption as it is currently crafted in state statute may not be available for agricultural activities in Miami Dade County pursuant to county regulation which is of some concern to us. I will tell you that we are in sort of the development process. We have begun the rule making process and we will be very shortly, if we haven't already, will be sharing a draft rule as to how we are going to do those binding determinations. I can talk about that.</p> <p>Mr. Gonzalez requested that Mr. Scott elaborate on what the binding determination does.</p> <p>Mr. Scott stated that statutes says that if you engage in agriculture and your activities are normal and customary for that agricultural practice and are not for the sole or predominant purpose of impeding or diverting surface waters or adversely impacting wetlands, you are exempt from wetlands permitting under state statute and so we go through a process of, first of all your land has to be classified as Ag under the tax rolls, then you have to be a bona fide agricultural operation which will be the first issue that we would deal with. Second is, are the activities normal and customary for agricultural practice in that area. For instance, if we were looking at say ditches, are the ditches much wider and deeper and used for purposes that are unusual for that type of agriculture, we would not consider that to be normal and customary. If you get past the first two, then you get to the third, we call this the three prong, the third prong is that activity for the sole or predominant purpose of impeding or diverting surface waters or adversely impacting wetlands. Because the statute says if it's for the sole or predominant purpose of doing those things, you are not eligible for that exemption. Like I said, heretofore, we have made advisory determination and they will now be binding. Either the land owner or the Water Management District can request such a determination and these are going to be prospective and we are also going to be dealing with enforcement cases that may have existed for sometime. Because of this change in law, the legislature made it retroactive to 1984 as long as you haven't already gotten a permit, you are eligible for this exemption. We have a large responsibility in our hands over the next year or two will be shaping where we go.</p> <p>Task Force discussion on the matter</p> <p>Chair requested consent from the Task Force that he be able to work with staff on trying to frameout, based on the Task Force's four points of responsibility, how to go forward in the time allotted by the resolution or the extended period.</p> <p>Task Force discussion on the matter.</p> <p>Discussion on next meeting date and have staff communicate with the Task Force on future dates.</p>						
<b>CONCLUSIONS</b>							
Possible meeting dates October 14, 2011 or October 19, 2011							
<b>ACTION ITEMS</b>	<table border="1"> <thead> <tr> <th data-bbox="821 1428 1154 1482">PERSON RESPONSIBLE</th><th data-bbox="1154 1428 1511 1482">DEADLINE</th></tr> </thead> <tbody> <tr> <td data-bbox="821 1482 1154 1566">Draft a memorandum from the Chair of the DWATF to the Board of County Commissioners requesting sponsorship for an amendment to Resolution 561-11 for an extension of time to the Task Force</td><td data-bbox="1154 1482 1511 1566">Staff</td></tr> <tr> <td data-bbox="821 1566 1154 1614">Task Force requested presentations from the USACOE, DEP and FDAC</td><td data-bbox="1154 1566 1511 1614">Chair and Staff</td></tr> </tbody> </table>	PERSON RESPONSIBLE	DEADLINE	Draft a memorandum from the Chair of the DWATF to the Board of County Commissioners requesting sponsorship for an amendment to Resolution 561-11 for an extension of time to the Task Force	Staff	Task Force requested presentations from the USACOE, DEP and FDAC	Chair and Staff
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Task Force requested presentations from the USACOE, DEP and FDAC	Chair and Staff						

## PUBLIC COMMENTS

OPEN

<b>DISCUSSION</b>	<p>(Comments from the public are reported verbatim herein as per instruction of the DWATF Chair)</p> <p><u>Laura Reynolds, representing Tropical Audubon Society – 5530 Sunset Drive, Miami</u></p> <p>"First I have a question and then a comment and thank you for the time. The first question I have is if the public can't be here at your scheduled time, how would they relay their comments to this task force? In other words, if they wanted to make public comments but couldn't be here, what's the procedure?"</p> <p>Mr. Lee Hefty responded that since staff was providing support to the Task Force, the comments can be provided to staff</p>
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who would in turn distribute it to the Task Force.

Ms. Reynolds: "Second thing I wanted to say, just from some of the initial comments and conversations that you've all had here today, I just wanted to highlight for you what I think the real importance here is. You're talking mostly about the 8.5 SMA Area which is a concern, because you're focusing on one little area. I would like to say is, with the comments you just gave, this is really a larger issue. We are talking about the entire county's water supply. DERM is basically protecting these wetlands for our water supply. So just keep that in mind that it's larger issue than just the 8.5 SMA and I think that is a larger importance in protecting wetlands. Thank you."

Ed Chapman, 12375 SW 202 Avenue Miami

"First, how will we know which date you pick so that we can be apprised of the meeting?"

Public was advised that meetings will be posted on the website, as well as publicly noticed and sent to those who signed in at the beginning of the meeting for interested participants.

Mr. Chapman: "I listed it on the page, secondly and lastly, this area that you were talking about partially, the 8.5 SMA, we were talking about hydrology, and I have a sworn testimony before congress in 1999 with Terri Rice from the Army Corps of Engineers and Dexter Lehtinen and so on. I can make that available to you if you want to see they hydrology work they did and how they testified. I can have it reproduced and provide it to you if you want."

Mr. Chapman was advised to provide the document to staff for distribution.

Kerri Barsh, 333 Avenue of the Americas

"I am here on just a procedural request. To the extent that you have power point presentations, I know everybody is trying to go paperless, but if you could either post them on your website or if you are unable to do so, have copies so that we can follow along and make notes. That would be helpful. That's all my request. Thank you."

Nancy Lee – 20448 NE 34 Court Aventura 33180

"I was listening a bit to the conversation and I felt very uncomfortable when you said attach an ordinance to what you're gonna give to the commission and the reason is your suppose to provide advise and recommendations to the BCC and they're my lawmaking body. I voted for them, I didn't vote for you guys, even though I appreciate you all being here. So I would like them to make my laws and I would prefer you give them the advice and the recommendations, but I feel uncomfortable you attaching an ordinance to it. Thank you."

Chair noted that the resolution talks about outreach so everything that can be done to let the public know about future meetings and the avenues available made to them as far as sending information.

MEETING ADJOURNED

4:00pm